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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150904827-6233-02]

RIN 0648-BF36

Fisheries of the Exclusive Economic Zone Off of Alaska; Observer Coverage Requirements for Small Catcher/Processors in the Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 112 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and revise regulations for observer coverage requirements for certain small catcher/processors in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Management Area (BSAI). This final rule modifies the criteria for NMFS to place small catcher/processors in the partial observer coverage category under the North Pacific Groundfish and Halibut Observer Program (Observer Program). Under this final rule, the owner of a non-trawl catcher/processor can choose to be in the partial observer coverage category, on an annual basis, if the vessel processed less than 79,000 lb (35.8 mt) of groundfish on an average weekly basis in a particular

prior year, as specified in this final rule. This final rule provides a relatively limited exception to the general requirement that all catcher/processors are in the full observer coverage category, and maintains the full observer coverage requirement for all trawl catcher/processors and catcher/processors participating in a catch share program that requires full observer coverage. This final rule promotes the goals of the BSAI and GOA FMPs, and the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis), and the Categorical Exclusion prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by e-mail to OIRA_submission@omb.eop.gov; or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Anne Marie Eich, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP (collectively referred to as Amendment 112/102). NMFS published a notice of availability (NOA) for Amendment 112/102 on December 17, 2015 (80 FR 78705). The comment period on the NOA for Amendment 112/102 ended on February 16, 2016. The Secretary of Commerce approved Amendment 112/102 on March 11, 2016, after accounting for information from the public, and determining that Amendment 112/102 is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. NMFS published a proposed rule to implement Amendment 112/102 and the regulatory amendments on December 29, 2015 (80 FR 81262; corrected January 22, 2016 (81 FR 3775)). The comment period on the proposed rule ended on January 28, 2016. NMFS received three comments on proposed Amendment 112/102 or the proposed rule.

This final rule modifies the criteria used by NMFS to place small catcher/processors in the partial observer coverage category in the Observer Program. Under this final rule, the owners of non-trawl catcher/processors can choose to be in the partial observer coverage category for the upcoming fishing year if their vessels processed less than 79,000 lb (35.8 mt) of groundfish on an average weekly basis in a particular prior year, as specified in this final rule. This final rule does not alter observer coverage requirements for a catcher/processor using trawl gear or for a catcher/processor when participating in a catch share program; these catcher/processors will continue to be required to be in the full observer coverage category. The terms “production” and “processing” are used synonymously in this final rule.

Below is a brief description of the Observer Program and the elements of the Observer Program that apply to Amendment 112/102 and this final rule. The preamble of the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)) provides a more detailed description of the Observer Program and this action.

The Observer Program

Regulations implementing the Observer Program allow NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the BSAI and GOA groundfish and halibut fisheries. The Observer Program was implemented in 1990 (55 FR 4839, February 12, 1990). In 2012, NMFS restructured the funding and deployment systems of the Observer Program (77 FR 70062, November 21, 2012). Since implementation of the restructured Observer Program in 2013, vessels, shoreside processors, and stationary floating processors participating in the groundfish and halibut fisheries off Alaska are placed in one of two observer coverage categories: 1) partial observer coverage category, or 2) full observer coverage category.

Under the restructured Observer Program, almost all catcher/processors were assigned to the full observer coverage category to obtain independent estimates of catch, at-sea discards, and prohibited species catch to reduce the potential for introducing error into NMFS' catch accounting system (as described in the proposed rule: 77 FR 23326, April 18, 2012). In the full observer coverage category, an observer must be on board a vessel any time the vessel is harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as specified at § 679.51(a)(2)(i). In the full observer coverage category, vessel operators obtain observers by contracting directly with observer providers. Operators of vessels in the full observer coverage category pay

the observer provider for each day the observer is on board the vessel, including days that the vessel is travelling to or from the fishing grounds but not fishing.

NMFS deploys observers on vessels in the partial observer coverage category according to a statistical sample design based on an annual deployment plan developed in consultation with the North Pacific Fishery Management Council (Council). Vessels in the partial observer coverage category are required to carry observers on fishing trips selected at random per the statistical sample design. Instead of paying for each day an observer is on board, NMFS assesses a fee equal to 1.25 percent of the ex-vessel value of the retained groundfish and halibut landed by vessels in the partial observer coverage category. NMFS uses these fees to establish a Federal contract with an observer service provider to deploy observers in the partial observer coverage category.

The restructured Observer Program provided three limited exceptions for catcher/processors to be placed in the partial observer coverage category, in recognition that the cost of full observer coverage would be disproportionate to total revenues for some small catcher/processors. The first exception applied to a hybrid vessel less than 60 feet length overall (LOA) that acted as both a catcher vessel and a catcher/processor in the same year in any year from 2003 through 2009. The second exception applied to a catcher/processor that had an average daily production of less than 5,000 lb (2.3 mt) round weight equivalent in its most recent full calendar year of operation from 2003 through 2009. The third exception applied to a catcher/processor that did not process more than one metric ton round weight of groundfish on any day in the immediately preceding year.

Under the first two exceptions, a vessel that started processing after 2009 could never qualify to be placed in the partial observer coverage category. Also, the first two exceptions permanently placed a vessel in the partial observer coverage category. These exceptions have no provision to review the production of a catcher/processor placed in the partial observer coverage category on an ongoing basis and remove them from the partial observer coverage category if their production increases. The third exception is theoretically open to any catcher/processor that began production after 2009.

Summary of Amendment 112/102

The following discussion summarizes the provisions of Amendment 112/102; additional details are provided in the NOA for Amendment 112/102 (80 FR 78705; December 17, 2015), the proposed rule for Amendment 112/102 (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)), and Section 2 of the Analysis (see **ADDRESSES**).

1. The production threshold for placement in the partial observer coverage category

This final rule establishes a production threshold for placement in the partial observer coverage category of average weekly groundfish production of 79,000 lb (35.8 mt) or less in a standard basis year or an alternate basis year (as defined below). The weekly production measure includes catcher/processors that engage in intense bursts of processing activity during a year but may not process throughout the whole year.

The Council and NMFS considered a range of average weekly production measures as a threshold for partial coverage. The production standard of 79,000 lb (35.8 mt) was selected to ensure that catcher/processors that are currently eligible for placement in the partial observer coverage category will continue to be eligible if these

vessels maintain their current levels of production. The catcher/processors eligible for partial observer coverage under this final rule are engaged primarily in the hook-and-line and Pacific cod and sablefish fisheries (see Section 2.2.1 of the Analysis). This production threshold maintains a limited exception to the general requirement that catcher/processors are in the full observer coverage category.

The Council and NMFS concluded that this production threshold would maintain a limited exception to the general requirement that catcher/processors are in the full observer coverage category. The Council does not anticipate that this action would impair data quality because the overwhelming amount of groundfish production would remain subject to full observer coverage (Section 3.6.7 of the Analysis). The catcher/processors eligible for the partial observer coverage category under this final rule are engaged primarily in the hook-and-line and Pacific cod and sablefish fisheries (see Section 3.7.12 of the Analysis).

2. The basis year for placing a catcher/processor in the partial observer coverage category

This final rule establishes the fishing year minus two years as the standard basis year for determining whether a catcher/processor is eligible for placement in the partial observer coverage category, as it is the most recent year for which NMFS will have full production data. As an example, to determine if a catcher/processor will be eligible for partial observer coverage in the fishing year that begins on January 1, 2017, NMFS will assess production data from 2015 (i.e., the fishing year minus two years).

If a catcher/processor had no production in the standard basis year, (i.e., the fishing year minus two years), but that catcher/processor had production before the

standard basis year, the vessel's most recent year of production, but not earlier than 2009, will be used (referred to as the alternate basis year) (see Section 2.4 of the Analysis). For example, if for the fishing year beginning January 1, 2017, the most recent fishing year prior to 2015 that a catcher/processor had production was 2011, the production from 2011 would be used to assess whether that catcher/processor met the threshold production amount to be eligible for placement in the partial observer coverage category. This final rule does not consider production data prior to 2009 because that is the first year that NMFS collected daily production reports (73 FR 76136, December 15, 2008), permitting calculation of average daily production (see Appendix D of the Analysis).

3. A catcher/processor with no history of production

The Council and NMFS also considered the initial type of observer coverage (i.e., full or partial) that should apply to a catcher/processor with no production in either the standard basis year or an alternate basis year, e.g., a new catcher/processor. This final rule places any non-trawl catcher/processor with no production from 2009 through the standard basis year in the partial observer coverage category in the partial observer coverage category in its first two years of operation. The costs of full observer coverage could prevent some non-trawl catcher/processors from starting processing, particularly processing of sablefish in remote fishing grounds in the Aleutian Islands, and processing of Pacific cod by catcher/processors using jig gear. If non-trawl catcher/processors had to operate for their first two years in the full observer coverage category, it might defeat one of the objectives of this action, namely encouraging beneficial activity that is being prevented by the cost of full observer coverage.

4. Owner choice by an annual deadline

Under this final rule, the owner of a qualifying vessel may request placement in the partial observer coverage category through an annual selection process that includes an annual deadline. Absent selection by the owner of a qualifying vessel, that catcher/processor will be placed in the full observer coverage category for the upcoming fishing year. This annual selection process is a new requirement for the three catcher/processors that are currently permanently placed in the partial observer coverage category.

This final rule does not establish a deadline for vessel operators to request placement in the partial coverage category during the 2016 fishing year; vessel operators can request placement in partial coverage as soon as the final rule is effective. The application process for the 2016 fishing year is described in further detail in the section Changes from the Proposed Rule.

This final rule establishes an annual deadline of July 1 to request placement in the partial observer coverage category applicable for the 2017 fishing year, and for all future fishing years. For the 2017 fishing year, a vessel owner would have to request placement in the partial observer coverage category by July 1, 2016.

5. Unchanged observer requirements for trawl catcher/processors and catcher/processors that participate in a catch share program

This final rule does not alter existing observer coverage requirements for a catcher/processor using trawl gear or a catcher/processor when participating in a catch share program; these catcher/processors will continue to be required to be in the full observer coverage category. The rationale for the existing observer coverage

requirements for each catch share program is described in the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)).

The Final Rule

This final rule revises regulations at 50 CFR part 679 to modify the criteria for NMFS to place small catcher/processors in the partial observer coverage category in the Observer Program. This final rule establishes a new paragraph in § 679.51, namely § 679.51(a)(3).

At § 679.51(a)(3)(i), this final rule defines the following terms for purposes of the new § 679.51(a)(3): a “fishing year” as the year during which a catcher/processor might be placed in the partial observer coverage category; the “standard basis year” as the fishing year minus two years; and the “alternate basis year” as the most recent year before the standard basis year in which a catcher/processor had any groundfish production but not earlier than 2009. At § 679.51(a)(3)(i), this final rule defines a vessel’s “average weekly groundfish production,” as the annual groundfish round weight production estimate for a catcher/processor, divided by the number of separate weeks during which production occurred, as determined by production reports, but excluding any groundfish that was caught with trawl gear. Thus, if a vessel has groundfish production any day in a week, excluding trawl production, that will be considered as a week of production.

At § 679.51(a)(3)(ii), this final rule specifies the annual deadline for requesting placement in the partial observer coverage category as July 1 of the year before the year that the vessel owner would like to be placed in the partial observer coverage category, for 2017 and all future years. As described in the section titled Changes from the

Proposed Rule, no deadline is specified for the owner of a catcher/processor to apply to be placed in the partial observer coverage category in 2016. NMFS should be able to make an eligibility determination within 30 days of receipt of the request for placement in the partial observer coverage category.

At § 679.51(a)(3)(iii), this final rule specifies the requirements for NMFS to place a catcher/processor in the partial observer coverage category, namely if the vessel owner requests placement by the annual deadline specified and the vessel meets the production threshold of 79,000 lb (35.8 mt) of average weekly groundfish production (excluding groundfish caught with trawl gear).

To determine eligibility for placement in the partial observer coverage category, NMFS will first examine the catcher/processor's production in the standard basis year, namely two years before the fishing year. If a catcher/processor produced at or below the production threshold (79,000 lb (35.8 mt) average weekly groundfish production) in the standard basis year, but more than zero pounds, the vessel will meet the production threshold for placement in the partial observer coverage category in the upcoming fishing year. If a catcher/processor exceeded that production threshold, the vessel will not be eligible for placement in the partial observer coverage category in the upcoming fishing year.

If a catcher/processor had no production in the standard basis year, NMFS will examine the vessel's production in the alternative basis year, namely the first year that the vessel had any production before the standard basis year but not earlier than 2009. If a catcher/processor had average weekly groundfish production of 79,000 lb (35.8 mt) or less in the alternate basis year, the vessel will meet the production threshold requirement

for placement in the partial observer coverage category for the upcoming fishing year. If a catcher/processor exceeded the production threshold in the alternate basis year, the vessel will not be eligible for placement in the partial observer coverage category. If a catcher/processor had no production from 2009 through the standard basis year, the vessel will meet the production threshold requirement for placement in the partial observer coverage category.

If a catcher/processor meets the production threshold requirement for placement in the partial observer coverage category and is not a vessel using trawl gear or otherwise required to have full observer coverage by participation in a catch share program, the catcher/processor will be placed in partial observer coverage only if the owner of the vessel makes the request by the annual deadline. This final rule specifies at § 679.51(a)(3)(iv) how the vessel owner can request placement in the partial observer coverage category. A vessel owner must submit a request form to NMFS, which NMFS will make available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

At § 679.51(a)(3)(v), this final rule specifies that NMFS will notify a vessel owner in writing if NMFS has placed the vessel in the partial observer coverage category. Until NMFS provides this notice, the catcher/processor will remain in the full observer coverage category.

At § 679.51(a)(3)(vi), this final rule specifies that if NMFS denies a request for placement in the partial observer coverage category, NMFS will issue an Initial Administrative Determination, which will explain the reasons for the denial. If the vessel owner wishes to appeal the denial, this final rule provides at § 679.51(a)(3)(vii) that the

vessel owner may appeal to the National Appeals Office according to the procedures in 15 CFR part 906. During the appeal process, the catcher/processor will remain in the full observer coverage category.

This final rule has several provisions in addition to the new paragraph at § 679.51(a)(3). This final rule adds regulations at § 679.51(a)(1)(i)(C) to clarify that certain catcher/processors (newly specified by this final rule at § 679.51(a)(3)) are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery. This final rule revises § 679.51(a)(2)(i)(A) to clarify that catcher/processors are placed in the full observer coverage category unless they are placed the partial observer coverage category using criteria specified at § 679.51(a)(3). This final rule also removes the regulations detailing the exceptions to the full observer coverage category for catcher/processors at § 679.51(a)(2)(iv)(B) that were in place prior to implementation of this final rule.

This final rule adds a new category to the definition of fishing trip for purposes of the Observer Program in § 679.2. Prior to implementation of this final rule, § 679.2 defined a fishing trip for a catcher vessel delivering to a shoreside processor or stationary floating processor and for a catcher vessel delivering to a tender vessel. This final rule defines a fishing trip for a catcher/processor in the partial observer coverage category, as the period of time that begins when the vessel departs a port to harvest fish until the vessel returns to port and offloads all processed product. This new definition is necessary because the current definition of a fishing trip does not accurately apply to a catcher/processor in the partial observer coverage category.

This final rule adds a new requirement at § 679.5(e)(13) for a catcher/processor landing report. The operator of a catcher/processor placed in the partial observer coverage category must submit a catcher/processor landing report by 2400 hours, A.l.t., on the day after the end of the fishing trip. This is a new reporting requirement created for this program. The landing report will be generated through eLandings or other NMFS-approved software by consolidating the daily production reports for the period the vessel operator defines as the fishing trip for purposes of observer coverage. NMFS will use information from the catcher/processor landing report to link catch data with observer data, to determine how to appropriately assign at-sea discard rates and prohibited species catch rates to unobserved catcher/processors in the partial observer coverage category, and to monitor compliance with the requirement for catcher/processors placed in the partial observer coverage category to log all fishing trips in the Observer Declare and Deploy System.

This final rule revises § 679.51(e)(1)(iii)(B) to remove requirements from catcher/processors placed in the partial observer coverage category to provide equipment for the purpose of observer data entry and transmission. Prior to implementation of this final rule, all catcher/processors were required to provide an observer with a computer, NMFS-supplied software, and the ability to transmit data to NMFS using a point-to-point connection from the vessel. Removing this requirement reduces the financial burden on small catcher/processors placed in the partial observer coverage category, especially for vessels mentioned in Section 3.7.4 of the Analysis that may begin to operate as a catcher/processor (e.g., catcher/processors using jig gear). Prior to implementation of this final rule, observers deployed in the partial observer coverage category entered and

transmitted data without equipment provided by the industry. Maintaining those equipment requirements for catcher/processors in the partial observer coverage category may have resulted in duplicative and unnecessary equipment being available on the vessel. NMFS typically receives data from observers deployed in the partial observer coverage category at the end of each trip, and that timeline is sufficient for catcher/processors in partial observer coverage under this final rule. NMFS notes that even with this change, more frequent data transmission could be achieved on some catcher/processors in partial observer coverage if the observer is allowed to use existing communication equipment.

This final rule revises § 679.55(a) and (c) to clarify that all catcher/processors named on a Federal Fishing Permit and not in the full observer coverage category are responsible for paying the observer fee.

This final rule corrects two cross references in § 679.2 and replaces language in § 679.5 that refers to old terminology of “100 percent observer coverage.” That terminology is replaced with “full observer coverage;” this is the terminology used under the restructured Observer Program.

Comments and Responses

During the public comment periods for the NOA for Amendment 112/102 and the proposed rule to implement Amendment 112/102, NMFS received three comment letters from the public that contained three substantive comments. NMFS’ responses to these comments are presented below.

Comment 1: All three commenters expressed support for this action.

Response: NMFS acknowledges these comments.

Comment 2: Two commenters requested that NMFS implement this action as soon as possible in 2016. One commenter would like to begin fishing for Individual Fishing Quota (IFQ) Program Pacific halibut and sablefish around April 1, but due to the costs of full coverage, would not start fishing until they were allowed to be placed in the partial observer coverage category. The second commenter stated that it benefits the few eligible catcher/processors to be placed in the partial observer coverage as soon as possible in 2016, and doing so would not negatively impact any other fishery participants.

Response: NMFS acknowledges these comments. Most of the catcher/processors that will be eligible to be placed in the partial observer coverage category under this final rule participate in the sablefish IFQ fisheries or fish for Pacific cod. Directed fishing for Pacific cod opened in most areas off Alaska on January 1, 2016, and the IFQ fishing season started on March 19, 2016. Under existing regulations, any catcher/processors not placed in the partial observer coverage category are in the full observer coverage category and must carry an observer at all times while fishing in the GOA or BSAI. As noted in the proposed rule and Analysis, being placed in the full observer coverage category imposes costs on vessel owners that generally exceed the costs of being placed in the partial observer coverage category. Allowing the owners of catcher/processors to apply to be placed in the partial observer coverage category as soon as possible in 2016 would minimize the cost of observer coverage for these vessel owners. Due to the costs of the full observer coverage category, some vessel owners may even choose not to fish until the catcher/processor can be placed in the partial observer coverage category. Therefore, for reasons discussed in the Classification section, the NMFS Assistant

Administrator has waived the 30-day delay in effectiveness of this final rule and will accept applications from the owners of catcher/processors to be placed in the partial observer coverage category on the day that this final rule is published in the **Federal Register**.

Comment 3: The proposed regulations appropriately add a paragraph (C), referencing catcher/processors, to 50 CFR 679.51(a)(1)(i). New paragraph (C) joins a list of certain classes of vessels in partial observer coverage, with paragraphs (A) and (B) describing certain catcher vessels. The language introducing the list at § 679.51(a)(1)(i) should be revised to reference not just catcher vessels but also catcher/processors: “...the following catcher vessels [and catcher/processors] are in the partial observer coverage category ...” The word “or” should be deleted after paragraph (A).

Response: NMFS agrees with the suggested addition of “and catcher/processors” at § 679.51(a)(1)(i). However, NMFS does not agree with the suggested deletion of the word “or” after § 679.51(a)(1)(i)(A). With the implementation of this final rule, § 679.51(a)(1)(i) contains three paragraphs, (A), (B), and (C), each of which is independent of the others. Therefore, it is appropriate to retain the word “or” after § 679.51(a)(1)(i)(A).

Changes from the Proposed Rule

Initial Implementation Deadline for 2016

The proposed rule for Amendment 112/102 (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)) proposed to establish an application deadline in 2016 for an owner of an eligible catcher/processor to request placement in the partial observer coverage category within 15 days after the effective date of the final rule. The

effective date of the final rule was anticipated to be 30 days after its publication in the **Federal Register**; therefore, this deadline would have provided a vessel owner 45 days to consider and submit a timely request for placement in the partial observer coverage category after the date of publication of the final rule.

NMFS has determined that an application deadline for the 2016 fishing year is not necessary. One of the primary reasons for an application deadline for 2017 and future years is to provide information about which catcher/processors will be in the partial observer coverage category in time to prepare the Observer Program annual deployment plan for the upcoming year. NMFS has already prepared the 2016 annual deployment plan assuming that any catcher/processor eligible to be in partial observer coverage in 2016 would choose to do so; therefore NMFS does not need an application deadline in 2016 to enable a catcher/processor to be placed in the partial observer coverage category. Nevertheless, an owner wishing to place a catcher/processor in the partial observer coverage category has an incentive to submit an application as soon as possible in 2016 if placement in partial coverage reduces the cost of observer coverage. In addition, not having an application deadline for 2016 provides additional time for potential new participants in the fishery to adjust to the new regulations. If a vessel owner missed the 2016 application deadline described in the proposed rule, the vessel would require full observer coverage until January 2017. Removing the 2016 deadline does not create a substantial administrative burden for NMFS because of the small number of vessels involved. Fishery participants are reminded that the July 1 deadline applies for the 2017 fishing year, and for all future fishing years.

Other Changes

NMFS adds the phrase “and catcher/processors” at § 679.51(a)(1)(i) to reference not just catcher vessels but also catcher/processors, as described in the response to Comment 3 in the Comments and Responses section.

NMFS corrects a verb disagreement error in the table at § 679.55(c) by changing “is” to “are” in row (5).

Classification

The Administrator, Alaska Region, determined that Amendments 112 and 102 and this final rule are necessary for the conservation and management of the BSAI and GOA groundfish fisheries and that they are consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure Act

The NMFS Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the provisions in this final rule. Maintaining the 30-day delay would be contrary to the public interest. Waiving the 30-day delay in effectiveness would allow the owners of catcher/processors to apply to be placed in the partial observer coverage category as soon as the final rule is published and would allow NMFS to approve this placement for eligible catcher/processors as soon as NMFS is able to complete the necessary review. Maintaining the 30-day delay in effectiveness would not prevent vessel owners from applying to be placed in the partial observer coverage category, but NMFS would not be able to approve placement of eligible catcher/processors in the partial observer coverage category until the effective date of the

final rule. This would require vessel owners to bear the costs of the full observer coverage category or delay fishing for up to 30 days. Public comment received on the proposed rule overwhelmingly requested that NMFS implement this action as soon as possible in 2016.

Most of the catcher/processors that will be eligible to be placed in the partial observer coverage category under this final rule participate in the sablefish IFQ fisheries or fish for Pacific cod. Pacific cod opened for directed fishing in most areas off Alaska on January 1, 2016, and the sablefish IFQ fishing season started on March 19, 2016. Under existing regulations, any catcher/processors not placed in the partial observer coverage category are in the full observer coverage category and required to carry an observer at all times while fishing in the GOA or BSAI. As noted in the proposed rule and Analysis, the full observer coverage category imposes costs on vessel owners that generally exceed the costs of being placed in the partial observer coverage category. Allowing the owners of catcher/processors to apply to be placed in the partial observer coverage category as soon as possible in 2016 would minimize the cost of observer coverage for these vessel owners.

Waiving the 30-day delay in this final rule's effectiveness will help maximize economic opportunities for these commercial fishermen in the BSAI and GOA during the 2016 fishing year and will allow qualifying vessel owners to start operating under partial observer coverage requirements as soon as the vessel owner receives notification from NMFS that the vessel is placed in the partial observer coverage category.

There is no administrative need for additional time beyond the point of notification from NMFS. This is a non-controversial action that affects a small number

of vessel owners. NMFS is unaware of any participants who would not be in favor of or who would be potentially harmed by waiving the 30-day delay in effectiveness. Without waiving the 30-day delay in effectiveness, vessel owners affected by this final rule that are currently in full observer coverage would have to wait an additional 30 days after publication of this final rule to be placed in partial observer coverage, which would delay the associated economic opportunities being sought through this final rule, thus undermining its intent.

For these reasons, the NMFS Assistant Administrator waives the 30-day delay in effectiveness of this final rule and will accept applications from the owners of catcher/processors to be placed in the partial observer coverage category on the day that this final rule is published in the **Federal Register**.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)) and the preamble to this final rule serve as the small entity compliance guide. This final rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following website:

<http://alaskafisheries.noaa.gov>.

Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final

rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the summary of the IRFA in the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775)).

Summary of Significant Issues Raised during Public Comment

NMFS published a proposed rule on December 29, 2015 (80 FR 81262; corrected January 22, 2016 (81 FR 3775)). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period closed on January 28, 2016. NMFS received 3 letters of public comment on the proposed rule. These comment letters did not address the IRFA. The comments did address the economic impacts of the rule generally by requesting that the rule be implemented as soon as possible to help maximize economic opportunities for commercial fishermen in the BSAI and GOA during the 2016 fishing year by allowing qualifying vessels to start operating under partial observer coverage requirements as soon as the vessel owner receives notification from NMFS that the vessel is placed in the partial observer coverage category. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by the Action

NMFS expects that up to 11 vessels will qualify for placement in the partial observer coverage category (See the Classification section of the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775))). NMFS estimates that up to 9 of the 11 vessels identified are considered directly regulated small entities.

Recordkeeping, Reporting, and Other Compliance Requirements

This action contains one new reporting and recordkeeping requirement that affects the small entities. Vessel owners desiring to be placed in the partial observer coverage category for a fishing year must submit a form expressing that choice by July 1 (except for the 2016 fishing year).

This form will use production data that will be available to the owner on the eLandings Web site. Given the simplicity of the form, and the accessibility of the data needed to complete it, NMFS estimates that it will take no more than 30 minutes to complete and file the form. For Paperwork Reduction Act estimation purposes, NMFS values this type of effort at \$37 per hour. Approximately nine small entities could be affected by this requirement. Thus, the total public time required to complete nine forms a year x 30 minutes is 4.5 hours. At a cost of \$37 per hour, the estimated cost is about \$167.

Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives

to the rule considered by the agency that affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities as a whole.

The Council and NMFS considered a range of alternatives and options to the preferred alternative that is implemented by this final rule. These alternatives and options are described in Section 2 of the RIR/IRFA and are not repeated here. The Council and NMFS did not identify alternatives to the preferred alternative that would minimize the impact on small entities better than the preferred alternative and still meet the objectives for this final rule—to provide a relatively limited exception to the general requirement that all catcher/processors are in the full observer coverage category, and maintain the full observer coverage requirement for all trawl catcher/processors and catcher/processors participating in a catch share program that requires full observer coverage.

The preferred alternative implemented by this final rule modifies existing regulations that are necessary to meet the objectives of this final rule. The preferred alternative is not anticipated to have adverse impacts on small entities. As noted in the IRFA, this action is expected to create a net benefit for the directly regulated small entities. In other words, the benefits of this action are expected to outweigh the reporting, recordkeeping, and other compliance costs described above.

The Council and NMFS adopted the average weekly production threshold of 79,000 lb (35.8 mt) as its preferred alternative. This production threshold allows a catcher/processor to qualify for placement in the partial observer coverage category for a year, if its round weight equivalent of their processed product, two years previous,

averaged less than 79,000 lb (35.8 mt) a week. If the vessel had not operated two years previously, NMFS will use its production in the first year with production since 2009, inclusive of 2009. If the vessel has not produced in this period, NMFS will allow the vessel to be placed in the partial observer coverage category in the year in which application is made, unless it is a trawl vessel, in which case it will be in the full observer coverage category.

This action reduces the relative burden on directly regulated small catcher/processors in comparison with the status quo. Vessels that qualify can forego full observer coverage and operate with less expensive partial observer coverage, should they choose to do so. The three catcher/processors that were permanently placed in the partial observer coverage category under the status quo now have to qualify for placement in the partial observer coverage category each year. The Council and NMFS chose the 79,000-lb average weekly threshold, rather than an alternative 42,000-lb average weekly threshold, to maximize the potential for these three vessels to qualify for the option to be placed in the partial observer coverage category in future years. Moreover, one of the objectives of this action was to end permanent placement in the partial observer coverage category for catcher/processor vessels and create a flexible system that could respond if a vessel increased production.

The Council and NMFS considered multiple elements and options under Alternative 2 that would qualify more vessels or fewer vessels for placement in the partial observer coverage category. In addition to the two average weekly production thresholds, a low and a high average daily, maximum daily production, maximum weekly, and annual production measures were considered.

The production thresholds analyzed under Element 1 Option 4B (high maximum weekly production) and Option 5B (high annual production) could have qualified one more small catcher/processor for partial observer coverage than is qualified under the preferred alternative (Option 2B: average weekly production threshold of 79,000 lb). The Council and NMFS did not select Option 4B because basing a threshold on maximum weekly production would have excluded some catcher/processors that had one week of relatively high production, but had relatively low average production over the remainder of the year. The Council did not select Option 5B because it would allow catcher/processors with relatively high production levels over the course of several weeks or months during the year into the partial observer coverage category. NMFS recommended that catcher/processors with these high intensity production periods during the year should remain in the full observer coverage category so that all of their fishing activity is observed.

The average weekly measure was chosen, because it provided a measure of production intensity, which the annual, maximum daily, and maximum weekly measures, did not provide; it was readily measurable; and it was less prone to manipulation or unusually high levels of production than the other options considered. A week is also the standard measure of production for a catcher/processor trip in current regulation (Section 2.2.1 of the Analysis and the Classification section of the proposed rule (80 FR 81262, December 29, 2015; corrected January 22, 2016 (81 FR 3775))).

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by Office of Management

and Budget (OMB) under control numbers 0648-0318, 0648-0515, and 0648-0711. The information collections are presented by OMB control number.

OMB Control No. 0648-0318

Public reporting burden for Catcher/Processor Observer Partial Coverage Request is estimated to average 30 minutes per response.

OMB Control No. 0648-0515

Public reporting burden for Catcher/Processor Landing Report through eLandings is estimated to average one minute per response.

OMB Control No. 0648-0711

Public reporting burden for submittal of Observer Fee through eFISH is estimated to average 1 minute per response.

Send comments regarding these burden estimates or any other aspect of these collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 23, 2016.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679-- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;

Pub. L. 111-281

2. In § 679.2, add paragraph (3)(iii) to the definition of “Fishing trip” to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means: * * *

(3) * * *

(iii) For a catcher/processor in the partial observer coverage category, the period of time that begins when the vessel departs a port to harvest fish until the vessel returns to port and offloads all processed product.

* * * * *

3. In § 679.5, add paragraph (e)(13) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(e) * * *

(13) *Catcher/processor landing report.* (i) The operator of a catcher/processor placed in the partial observer coverage category under § 679.51(a)(3) must use eLandings or other NMFS-approved software to submit a catcher/processor landing report to NMFS for each fishing trip conducted while that catcher/processor is in the partial observer coverage category.

(ii) The vessel operator must log into eLandings or other NMFS-approved software and provide the information required on the computer screen. Additional instructions for submitting a catcher/processor landing report is on the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(iii) For purposes of this landing report requirement, the end of a fishing trip is defined in § 679.2, paragraph (3)(iii) of the definition of a fishing trip.

(iv) The vessel operator must submit the catcher/processor landing report to NMFS by 2400 hours, A.l.t., on the day after the end of the fishing trip.

* * * * *

4. In § 679.51,

- a. Revise paragraphs (a)(1)(i) and (a)(2)(i)(A);
- b. Remove and reserve paragraphs (a)(2)(iv)(B) and (a)(2)(v);
- c. Add paragraph (a)(3); and
- d. Revise paragraph (e)(1)(iii)(B) introductory text to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(a) * * *

(1) * * *

(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at §679.2:

(A) A catcher vessel designated on an FFP under §679.4(b)(1); or

(B) A catcher vessel when fishing for halibut with hook-and-line gear and while carrying a person named on a permit issued under §679.4(d)(1)(i), §679.4(d)(2)(i), or §679.4(e)(2), or for sablefish IFQ with hook-and-line or pot gear and while carrying a person named on a permit issued under §679.4(d)(1)(i) or §679.4(d)(2)(i); or

(C) A catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section.

* * * * *

(2) * * *

(i) * * *

(A) Catcher/processors, except a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section;

* * * * *

(3) *Catcher/processor placement in the partial observer coverage category for a year*—(i) *Definitions*. For purposes of this paragraph (a)(3), these terms are defined as follows:

(A) *Average weekly groundfish production* means the annual groundfish round weight production estimate for a catcher/processor, divided by the number of separate weeks during which production occurred, as determined by production reports, excluding any groundfish caught using trawl gear.

(B) *Fishing year* means the year during which a catcher/processor might be placed in partial observer coverage.

(C) *Standard basis year* means the fishing year minus two years.

(D) *Alternate basis year* means the most recent year before the standard basis year in which a catcher/processor had any groundfish production but not earlier than 2009.

(ii) *Deadline for requesting partial observer coverage*. For the 2017 fishing year and every fishing year after 2017, the deadline for requesting partial observer coverage is July 1 of the year prior to the fishing year.

(iii) *Requirements for placing a catcher/processor in the partial observer coverage category*. NMFS will place a catcher/processor in the partial observer coverage category for a fishing year if the owner of the catcher/processor requests placement in partial observer coverage by the deadline for requesting partial observer coverage for that fishing year and the catcher/processor meets the following requirements:

(A) An average weekly groundfish production of:

(1) 79,000 lb (35.8 mt) or less, but more than zero lb, in the standard basis year;

or

(2) Zero lb in the standard basis year and 79,000 lb (35.8 mt) or less, but more than zero lb, in the alternate basis year; or

(3) Had no production from 2009 through the standard basis year; and

(B) Is not a catcher/processor using trawl gear; and

(C) Is not subject to additional observer coverage requirements in paragraph (a)(2)(vi) of this section.

(iv) *How to request placement of a catcher/processor in partial observer coverage.* A vessel owner must submit a request form to NMFS. The request form must be completed with all required fields accurately completed. The request form is provided by NMFS and is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>). The submittal methods are described on the form.

(v) *Notification of placement in the partial observer coverage category.* NMFS will notify the owner if the catcher/processor has been placed in the partial observer coverage category in writing. Until NMFS provides notification, the catcher/processor is in the full observer coverage category for that fishing year.

(vi) *Initial Administrative Determination (IAD).* If NMFS denies a request to place a catcher/processor in the partial observer coverage category, NMFS will provide an IAD, which will explain the basis for the denial.

(vii) *Appeal.* If the owner of a catcher/processor wishes to appeal NMFS' denial of a request to place a catcher/processor in the partial observer coverage category, the

owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), a mothership, a catcher vessel 125 ft LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

* * * * *

5. In § 679.55, revise paragraphs (a) and (c) to read as follows:

§ 679.55 Observer fees.

(a) *Responsibility.* The owner of a shoreside processor or stationary floating processor named on a Federal Processing Permit (FPP), a catcher/processor named on a Federal Fisheries Permit (FFP), or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at § 679.55(c) must comply with the requirements of this section. Subsequent non-renewal of an FPP, FFP, or a Registered Buyer permit does not affect the permit holder's liability for noncompliance with this section.

* * * * *

(c) *Landings subject to the observer fee.* The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing by a catcher vessel or production by a catcher/processor is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that are harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a)	Not applicable, an FFP is required to harvest these groundfish in the EEZ	Yes
(2) Groundfish listed in Table 2a to this part that are harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a)	No	Yes
(3) Sablefish IFQ, regardless of where harvested	Yes	Yes
(4) Halibut IFQ or halibut CDQ, regardless of where harvested	Yes	Yes
(5) Groundfish listed in Table 2a to this part that are harvested in Alaska State waters, but are not subtracted from a total allowable catch limit under § 679.20(a)	No	No
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested	No	No

* * * * *

§§ 679.2 and 679.5 [Amended]

6. At each of the locations shown in the “Location” column, remove the phrase indicated in the “Remove” column and replace it with the phrase indicated in the “Add” column for the number of times indicated in the “Frequency” column.

Location	Remove	Add	Frequency
§ 679.2 Definition of “Suspension”	§ 679.50	§ 679.53	1
§ 679.2 Definition of “Suspension”	§ 679.50(j)	§ 679.53(c)	1
§ 679.5(e)(10)(iv)(B)	required to have 100 percent observer coverage or more,	in the groundfish and halibut fishery full observer coverage category described at § 679.51(a)(2),	1

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